

MONTANA LEGISLATIVE HISTORY

Chapter 562 ~~19~~ 2001

Bill H 290 S _____ Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-25 ☒ c

2-13 ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3-15 ☒ c

3-26 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Conference Committee 4-17

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

1/13	Introduced		
1/13	Referred to Judiciary		
1/25	Hearing		
2/13	Committee Executive Action--Bill Passed as Amended	18	0
2/14	Committee Report--Bill Passed as Amended		
2/19	2nd Reading Passed	99	0
2/20	3rd Reading Passed	100	0
	Transmitted to Senate		
2/28	Referred to Judiciary		
3/15	Hearing		
3/26	Committee Executive Action--Bill Concurred as Amended	5	2
3/26	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred on Voice Vote	48	1
3/31	3rd Reading Concurred	47	1
	Returned to House with Amendments		
4/05	2nd Reading Senate Amendments Not Concurred	91	9
4/05	Conference Committee Appointed		
4/09	Conference Committee Appointed		
4/17	Hearing		
4/18	Conference Committee Report Received		
4/18	Conference Committee Report Received		
4/18	2nd Reading Conference Committee Report Adopted on Voice Vote	49	0
4/19	2nd Reading Conference Committee Report Adopted	96	3
4/19	3rd Reading Conference Committee Report Adopted	49	1
4/20	3rd Reading Conference Committee Report Adopted	96	4
4/20	Sent to Enrolling		
4/21	Returned from Enrolling		
4/21	Signed by Speaker		
4/21	Signed by President		
4/23	Transmitted to Governor		
5/02	Signed by Governor		
5/03	Chapter Number Assigned		
	Chapter Number 562		
	Effective Date: 10/01/2001 - All Sections		

HB 291 Introduced by Lindeen

LC0584 Drafter: Lee Evans

Agricultural Experiment Stations Appropriation for Facility Improvements

1/13	Introduced		
1/13	Referred to Appropriations		
2/01	Hearing		
3/12	Tabled in Committee		
3/24	Missed Deadline for Appropriation Bill Transmittal		

HB 292 Introduced by Fuchs

LC1254 Drafter: Sternberg

Fees to Fund Fishing Access Enhancement Program

12/13	Fiscal Note Needed		
1/13	Introduced		
1/13	Referred to Fish, Wildlife and Parks		
1/13	Fiscal Note Requested		
1/18	Hearing		
1/19	Fiscal Note Received		
1/22	Fiscal Note Printed		
2/07	Committee Executive Action--Bill Passed as Amended	17	2
2/07	Committee Report--Bill Passed as Amended		
2/12	2nd Reading Passed	96	4
2/13	3rd Reading Passed	96	2

2/02	2nd Reading Passed	82	18
2/03	3rd Reading Passed	88	11
	Transmitted to Senate		
2/06	Referred to Judiciary		
3/06	Hearing		
3/06	Committee Executive Action--Bill Concurred	6	1
3/06	Committee Report--Bill Concurred		
3/08	2nd Reading Concurred on Voice Vote	48	0
3/09	3rd Reading Concurred	46	0
	Returned to House		
3/12	Sent to Enrolling		
3/12	Returned from Enrolling		
3/13	Signed by Speaker		
3/14	Signed by President		
3/15	Transmitted to Governor		
3/22	Signed by Governor		
3/22	Chapter Number Assigned		
	Chapter Number 104		
	Effective Date: 3/22/2001 - All Sections		

HB 287 Introduced by Gillan

LC0661 Drafter: Lane

Compensation for Child Care If Not Excused from Jury Service

1/13	Introduced
1/13	Referred to State Administration
1/13	Fiscal Note Requested
1/18	Hearing
1/19	Tabled in Committee
1/22	Fiscal Note Received
1/24	Fiscal Note Printed
2/23	Missed Deadline for General Bill Transmittal

HB 288 Introduced by Bixby

LC0825 Drafter: C. Erickson

Statutory Appropriation for Nonbeneficiary Students in Tribal Colleges

12/01	Fiscal Note Needed
1/13	Introduced
1/13	Referred to Appropriations
1/13	Fiscal Note Requested
1/18	Fiscal Note Received
1/19	Fiscal Note Printed
1/23	Hearing
3/21	Tabled in Committee
3/24	Missed Deadline for Appropriation Bill Transmittal

HB 289 Introduced by Waddill

LC1486 Drafter: Petesch

Eliminate Distance Restrictions on Organization of Municipality

1/13	Introduced
1/13	Referred to Local Government
2/08	Hearing
2/09	Tabled in Committee
2/23	Missed Deadline for General Bill Transmittal

HB 290 Introduced by Waddill

LC1364 Drafter: Lane

Include Coercion and Surprise in Definition of Without Consent for Rape

1

H BILL NO. 290

2

INTRODUCED BY Butch Windhill

(Primary Sponsor)

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING CONCEALMENT OR SURPRISE IN THE DEFINITION

5

OF "FORCE" IN THE CONTEXT OF SEXUAL INTERCOURSE WITHOUT CONSENT; AND AMENDING

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SECTION 45-5-501, MCA."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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Section 1. Section 45-5-501, MCA, is amended to read:

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"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

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(a) the victim is compelled to submit by force against the victim or another; or

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(b) the victim is incapable of consent because the victim is:

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(i) mentally defective or incapacitated;

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(ii) physically helpless;

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(iii) less than 16 years old; or

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(iv) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the

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perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary

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authority over the victim, unless the act is part of a lawful search.

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(2) As used in subsection (1), the term "force" means:

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(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission

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of a forcible felony by the offender; ~~or~~

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(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the

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offender has the ability to execute the threat; or

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(c) the use of concealment or surprise to overcome the victim."

26

- END -

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Judiciary -

01:42 PM

HB 290 SPONSOR: Waddill, Butch SHORT TITLE: Include coercion and surprise in definition of without consent for rape
REFERRED ON: 01/13/2001 HEARD ON: 01/25/2001
EXECUTIVE ACTION: 02/13/2001 - Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION: 05/03/2001 Chapter Number Assigned

HB 295 SPONSOR: Jent, Larry SHORT TITLE: Revise laws governing driving under the influence
REFERRED ON: 01/13/2001 HEARD ON: 02/01/2001
EXECUTIVE ACTION: 02/02/2001 - Bill Passed -- VOTE: 20 - 0
FINAL DISPOSITION: 05/03/2001 Chapter Number Assigned

HB 313 SPONSOR: Masolo, Gay Ann SHORT TITLE: Revise laws relating to domestic violence
REFERRED ON: 01/16/2001 HEARD ON: 02/09/2001
EXECUTIVE ACTION: 02/16/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

HB 315 SPONSOR: Gallik, Dave SHORT TITLE: Enhanced penalties for animal abuse
REFERRED ON: 01/16/2001 HEARD ON: 01/26/2001
EXECUTIVE ACTION: 02/12/2001 - Bill Passed as Amended -- VOTE: 13 - 7
FINAL DISPOSITION: 04/26/2001 (S) Died in Standing Committee

HB 317 SPONSOR: Peterson, Ken SHORT TITLE: Clarify charging by complaint -- signature under oath
BY REQUEST OF: Attorney General
REFERRED ON: 01/16/2001 HEARD ON: 01/26/2001
EXECUTIVE ACTION: 01/26/2001 - Bill Passed -- VOTE: 17 - 0
FINAL DISPOSITION: 04/28/2001 Chapter Number Assigned

HB 323 SPONSOR: Facey, Tom SHORT TITLE: Revise laws on deviate sexual conduct
REFERRED ON: 01/17/2001 HEARD ON: 01/29/2001
TABLED ON: 02/15/2001
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal

HB 329 SPONSOR: Somerville, Roger SHORT TITLE: Clarify applicability of registration of sexual and violent offenders
REFERRED ON: 01/17/2001 HEARD ON: 01/29/2001
EXECUTIVE ACTION: 01/29/2001 - Bill Passed -- VOTE: 18 - 2
FINAL DISPOSITION: 03/29/2001 Chapter Number Assigned

6

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 25, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Linda Holden (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 290 - 1-18-01**
HB 286 - 1-18-01
Executive Action: **HB 224 - DPAA - 18-1**

HB 276 - DP - 16-2

HB 238 - DPAA - 19-0

HEARING ON HB 290

An Act including concealment or surprise in the definition of "force" in the context of sexual intercourse without consent.

Sponsor: Rep. Butch Waddill, HD 62, Florence, EXHIBIT(juh20a01)
EXHIBIT(juh20a02)

Proponents: Julie Millam, Executive Director, Christian Coalition, Montana

Kelly Cogley, 3rd year law student, University of Montana, School of Law; Women's Law Caucus

Kimberley Dubek, University of Montana, School of Law; Women's Law Caucus.

Brenda Wahler, 2nd year law student, University of Montana, School of Law; Women's Law Caucus.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 20.4}

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Eggers, Peterson, Noennig to Ms. Cogley for clarification

{Tape : 1; Side : A; Approx. Time Counter : 20.4 - 29.5}

{Tape: 1; Side : B; Approx. Time Counter : 0.1 - 13.7}

Proponents: Because of adverse weather conditions these proponents arrived late and were allowed to testify.

Kirsten LaCroix, Prosecutor, Missoula

Rich Ochsner, Detective, City Police, Missoula

Dallas Erickson, Montana Citizens for Decency Through Law. EXHIBIT(juh20a03)

Harris Himes, Attorney, Hamilton

Questions by the Committee: Reps. Clancy, Harris, Adams to Ms. LaCroix and Mr. Ochsner

{Tape : 1; Side : B; Approx. Time Counter : 17.7 - 29.1}

Closing by Sponsor: Rep. Waddill closed the Hearing on HB 290 saying he was very concerned about plugging the hole in this law to stop the exploitation of women.

HEARING ON HB 286

An Act establishing the right of crime victims to attend criminal proceedings.

Sponsor: Rep. Bill Thomas, HD 93, Central Montana, Hobson said whether constitutionally, statutorily or both, victims are given a right to be present at a trial in the majority of the states in this nation. Montana has provided important rights for victims of crime and has been a leader in many ways. Yet it has not addressed the crucial issue of providing for the need this legislation seeks, which is the right to be present throughout trial, not to be excluded merely because the victim or a family member is called to testify.

Proponents: Carol Smith, Lewistown

Deb Bakke, Friendship Center, Victim/Witness Program

Jon Parker, Victim Advocate, Lewistown

EXHIBIT(juh20a04)

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 17.8}

Opponents: None

Questions from Committee Members and Responses: Reps. Adams, Harris, Eggers, Noennig, Newman to Mr. Parker for clarification.

{Tape : 2; Side : A; Approx. Time Counter : 17.8 - 29.8}

Closing by Sponsor: Rep. Thomas closed the Hearing on HB 286 by saying there are two issues here. The first is whether what is being proposed is a basic right that should be afforded to victims and their family members and secondly, whether a defendant's right to a fair trial is compromised in any way as a result of this legislation. On the first, it is an inherent right to attend all proceedings of a trial without undue limitation and on the second, as case law indicates, there is no undoing of the fundamental rights that must be enforced.

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 8.8}

EXHIBIT

DATE

1-25-01

NB

290

Archives

August 23, 1999

Rape case raises tricky legal issues

By MICHAEL MOORE of the Missoulian

Lawyer for masseur Stevens says there must be force or threat

A woman goes to a massage therapist. She takes off her clothes, as usual, covers herself with a sheet, then settles back for a massage. After 20 minutes, she's deeply relaxed. Eventually she drifts into sleep.

When she awakens, the masseur has his fingers in her vagina. Stunned, she does nothing for a few seconds, then tells the man to stop. He does, then apologizes.

The woman leaves, and later tells a friend what happened. Eventually, she talks to police. An investigation begins and the masseur is later charged with sexual intercourse without consent, Montana's legal longhand for rape.

Clearly, the masseur has violated the woman's trust. But did he rape her? Did he, as Montana law requires, touch the woman without her consent? Did he use force or the threat of force, as the law requires? Or did he commit a misdemeanor sexual assault rather than a rape?

This debate is being carried out in Missoula District Court, where masseur Harold Lee Stevens is charged in a similar scenario with five counts of sexual intercourse without consent, five counts of misdemeanor sexual assault, one count of attempted sexual intercourse and one count of tampering with a witness. In the rape cases, Stevens' allegedly penetrated the women's vaginas with either his fingers or his tongue. In all, Deputy Missoula County Attorney Suzy Boylan alleges that Stevens had sexual contact with 10 clients, none of whom wanted such contact.

Stevens operated HLS Massage until his arrest in late April. The charges allege crimes dating back to 1996.

Stevens' attorney, Rich Buley, has filed a motion asking District Judge Ed McLean to dismiss the charges. His argument on the rape charges is simple: The law says the state must prove that Stevens used force or the threat of force to convict him of rape. Buley's briefs supporting his motion as much as admits that the 38-year-old Stevens touched the women sexually. Stevens' explanation for his behavior is, again, simple - he wanted to bring the women pleasure. In almost every case, he told the women that if he did something they didn't like, they only needed to tell him and he'd stop.

Buley subsequently claims that the women acquiesced to Stevens' touching. When the women finally objected to his sexual touches, he quit.

Boylan argues that Stevens' actions took the women by surprise. They thought they were going to receive professional massages. Instead, they were sexually groped. In at least one instance, a woman was asleep and awakened to find Stevens touching her genitals.

"In the case at bar, the Defendant took advantage of his professional position, and the vulnerable position of the victims, to commit sexual crimes without giving the victims the opportunity to consent or communicate a lack of consent," Boylan wrote in her brief opposing Buley's motion to dismiss.

Both attorneys cite law and case precedents to support their positions, but the Stevens case appears to present the court with a unique set of facts for a Montana rape case.

"What I think they're getting at in this case is a gap in the rape law," University of Montana law professor Melissa Harrison said recently. "The question it raises is whether our definition of force and without consent are too narrow."

In several ways, the Stevens case is symptomatic of the evolving frontier of rape law.

American laws against rape stem from the English common law, where they originated as an extension of the dubious notion that women were the property of men. Because a father was expected to be paid when his daughter married, a value was placed on the woman's virginity. If she was raped before marriage, she had less value. Indeed, the rape was considered a crime against the father, not the daughter.

Obviously, rape law has come a long way since the ancient time when the rapist and victim both were stoned to death. Even so, many laws continue to reflect the still-existent cultural notion that a certain amount of sexual aggression from men is expected.

"With its many gaps and limits, the law even tends to validate and reinforce the strands within our culture that persist in seeing aggressive male sexuality as a biological given that poses no problems," Stephen Schulhofer, a professor of law and criminology at the University of Chicago, wrote in the October 1998 *The Atlantic Monthly*.

The very fact that rape laws devote time to defining force reinforces the notion that some force is acceptable, while too much is not, Schulhofer suggests.

Montana law describes "without consent" as occurring when the victim is compelled to submit by force. Force is then defined as the "infliction, attempted infliction or threatened infliction of bodily injury or the commission of a forcible felony by the offender ..."

Does Stevens' conduct meet any of those definitions?

Harrison thinks not.

"I don't see any room for surprise in our law," Harrison said. "It's pretty specific about force and I'm not sure that it's present in this case."

Schulhofer suggests that most rape laws make it hard to determine what is and isn't rape.

"Criminal law's most obvious weak spot is its continuing vagueness - a surprise after all the effort devoted to reform," he wrote. "Standards remain extraordinarily murky, especially for determining when a man's behavior amounts to prohibited force or when a woman's conduct signals her consent."

In the Stevens case, Boylan makes the argument that Stevens' behavior, particularly the surprise element, amounts to what's called "constructive force." She also claims that the women who either were asleep or in a "dream state" were "physically helpless" and therefore were incapable of consent.

In Montana law, physically helpless means "that a person is unconscious or is otherwise physically unable to communicate unwillingness to act."

Boylan argues that because the women were highly relaxed or asleep during the massages - which they trusted were being done by a professional person - they were incapable of communicating consent.

"I think that may be the state's strongest argument," Harrison said.

In the misdemeanor sexual assault cases, where Boylan doesn't have to show

force, Buley argues that Stevens had no idea that the women didn't want him to touch them.

"Since the Defendant stopped when lack of consent was communicated to him, it is certain that the Defendant did not know that there was lack of consent prior to that," Buley wrote in response to Boylan's brief.

Buley's argument for dismissal is strict and literal. He claims the law requires force or its threat. If a prosecutor can't show that, rape is out. The defendant may have wronged the woman, but he didn't rape her, at least not under Montana law.

Boylan's argument is more expansive, drawing less support from Montana law than from other states, such as North Carolina, which expressly recognizes surprise as a form of force. North Carolina and other states have drawn on the common sense notion that a surprised person has no chance to communicate a lack of consent.

But North Carolina law is not Montana law, Harrison reminded.

"I think you may have a slam dunk on sexual assault, but there may be a problem with some of the rape charges, particularly those where there's no claim of physical helplessness," she said. "In my view, it doesn't sound like sexual intercourse without consent the way our law defines it. This case may point up a hole in the law."

In fact, prosecutors are talking about going to the Montana Legislature in an effort to broaden the scope of the rape law, most likely by seeking a provision that involves the conduct of professionals, including doctors, psychotherapists and massage workers.

District Judge Ed McLean is expected to rule within two weeks on Buley's motion.

Search for

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Maximum stories:

HB-290
Introduced by B. Waddill
Excerpts from Title 45, MCA

EXHIBIT 2
DATE 1-25-01
HB 290

Section 45-5-502 (page 594) **Sexual Assault**

- (1) A person who **knowingly subjects another person to any sexual contact without consent** commits the offense of sexual assault.
- (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 45-2-101, MCA (pg 565)

- (66) **"Sexual contact"** means **touching** of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:
 - (a) Cause bodily injury to or humiliate, harass, or degrade another; or
 - (b) Arouse or gratify the sexual response or desires of either party.

Section 45-2-101, MCA (page 565)

- (67) (a) **"Sexual intercourse"** means penetration of the vulva, anus, or mouth of one person by the penis of another person, **penetration of the vulva or anus of one person by a body member of another person**, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:
 - (i) Cause bodily injury or humiliate, harass or degrade; or
 - (ii) Arouse or gratify the sexual response or desire of either party.
- (b) For purposes of subsection (67)(a), **any penetration, however slight**, is sufficient.

Section 45-5-503 MCA (page 594 & 595) **Sexual intercourse without consent.**

- (1) A person who **knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent....**
- (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

Statement of MICHAEL J. SCOLATTI, Ph. D.
From Affidavit Filed on May 7, 1998
In Montana Twenty-First Judicial District Court, Ravalli County

EXHIBIT 3
DATE 1-25-01
NO. 290

Video Software Dealers Association,
The Ravalli Republic, Jessie Dalbey,
John Demme, Dale Johnson, Russell
Lawrence, Ruth Thorning and Jon Jackson
Plaintiffs,

v.
County of Ravalli
Defendant

Michael J. Scolatti, being first duly sworn says;

1. I am Michael J. Scolatti and I am a Licensed Clinical Psychologist in private practice at 619 S.W. Higgins, Suite N, Missoula, Montana (406) 549-4870. I specialize in the assessment and treatment of sexual offenders and victims of sexual abuse. I developed the Sex Offender Treatment Program used to treat sexual offenders at the Montana State Prison. In addition, I have served as a consultant to the National Corrections Association, the Missoula Police Department, Missoula Youth Homes, Missoula and Ravalli County Youth Courts and the Missoula school district. I am a member of the Association for the Treatment of Sexual Abusers, the Montana Sex Offender Treatment Association and Division 41: Psychology and the Law of the American Psychological Association. I have been working in this area for the last 18 years and I have lectured on the subject throughout the United State and Canada. I have evaluated and treated well over 500 adult and adolescent sexual offenders.

2. In my experience approximately 75% of the sexual offenders I have worked with in my out patient program have used some type of pornographic and/or obscene material on a regular basis. In addition, approximately 15 to 20 percent have indicated they are "addicted" to pornography or obscenity. For the most part, the sex offenders use pornography and obscenity to stimulate their sexual appetite, unfortunately their outlet for their sexuality could be a child and their use of pornography and obscenity is often a "trigger" that will set an offender's cycle of abuse into motion.

3. In studies other than my own professional experience the most consistent finding is that violent pornography and obscenity involving sadomasochist themes was significantly related to sexual crimes, especially rape. A 1984 study by Baron and Strauss found a significant correlation between consumption of pornography (in this case soft-core) and incidence of reported rape using cases reported in all 50 states. In this study it was found that the incidence of rape increased by 7 per 100,000 population, for an increase of 1 standard deviation in pornographic magazine consumption. A finding closer to my work with sex offenders indicates that 46% of rapists, 59% of homosexual pedophiles and 50% of heterosexual pedophiles reported a desire to

own some pornography or obscenity while only 29% of the non-offending men in a control group reported a similar desire (Goldstein et al., 1974). Of those men reporting a desire to own pornography or obscenity, 100% of the rapists, 80% of the homosexual pedophiles and 83% of the heterosexual pedophiles actually owned some type of pornographic or obscene material. Only 50% of the non-offending men in the control group actually owned some type of these materials.

4. In the course of my work I have confiscated, or offenders have brought to me their collections of pornography and obscenity. This material ranges the gamut from bestiality to sadomasochistic activities. One offender dropped off 17 different magazines all with women who had shaved their pubic areas. This man was not in my program for having sex with partners his own age who shaved themselves, he had sexually molested 15 girls between the ages of four and eight. He compulsively used the pictures of "shaved" women in the magazines to fulfill his fantasies of sex with children between episodes of abuse. I could recount ten to twenty similar stories of how offenders use pornographic and obscene material to increase their deviant arousal, however I feel the preceding example is characteristic of the use of these materials by sex offenders.

5. For sexual offenders pornography and obscenity serves to disinhibit their judgement and morals, as one offender and user of these materials told me, "I thought all men and women had sex like that, but it sure didn't work on my girlfriend." While this statement may seem incredibly naive or stupid it is not an uncommon sentiment among the men and teenage boys I work with. These men and boys isolate themselves, pornography and obscenity often become their substitute for real relationships and their template for human sexuality. These materials have an even more pernicious effect in the way men and boys view women. Women are often viewed by consumers of these materials as a commodity, an object, a piece of meat. As one offender graphically explained, "women ain't nothing but a life support system for a pussy." Pornography and obscenity directly promotes, contributes to and feeds this type of attitude. Nude dancing has the same effect. Given the voyeuristic quality of nude dancing and its similarities to viewing pornographic and obscene materials I feel it is logical to assume the data regarding pornographic and obscene material can be extrapolated to nude dancing. Interestingly, approximately 80% of all nude dancers have been victims of childhood sexual abuse.

6. In conclusion, public nude exhibitions, dissemination and use of obscenity, and minors viewing harmful materials of a prurient sexual nature with no literary, scientific, artistic or political value have no positive or socially redeeming values and only contribute to the demeaning and degrading of women and children, can trigger cycles of abuse, destroy healthy and appropriate sexual relations between men and women and harm family relations in general. These activities depersonalize and dehumanize women, men and that act of making love and reduce human sexuality to a mechanical and sometimes abusive activity, entirely devoid of caring, nurturance and love which should be the centerpiece of male-female relationships. The health, welfare and protection of our citizens, families and communities are a compelling interest of our government and laws and are greatly served by the prohibition of such activities.

Further your affiant sayeth naught.

Signed: Michael J. Scolatti, Ph. D.

(Original available in court file cause No. DV-96-102)

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY

COMMITTEE

DATE 1-25-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	/		
REP. DARREL ADAMS	/		
REP. GILDA CLANCY	/		
REP. AUBYN CURTISS	/		
REP. BILL EGGERS	✓		
REP. STEVE GALLUS	/		
REP. GAIL GUTSCHE	/		
REP. CHRISTOPHER HARRIS	/		
REP. LINDA HOLDEN			
REP. JOAN HURDLE	/		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	/		
REP. MARK NOENNIG	/		
REP. KEN PETERSON	/		
REP. DIANE RICE	/		
REP. BILL THOMAS	/		
REP. MERLIN WOLERY	/		
REP. CINDY YOUNKIN	✓		

-MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 1-25-01

BILL NO. JB 290

SPONSOR(S) Rep. Waddell

TYPE
PROPOSER (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P)OI	Jillie Millam	Helena	mtcc
(P)OI	Brenda Wahler	Helena	UM LAW SCHOOL WOMEN'S LAW CAUCUS
(P)OI	RICH JOHNSON	MISSOULA	MISSOULA PA
(P)OI	Kirsten LaCroix	Missoula	Missoula County Atty
(P)OI	Dallas Erickson	STEVENSVILLE	MC DL
(P)OI	HARRIS HINES	HAMILTON	Self
(P)OI	Jeanne Poe	Hamilton	self
(P)OI	Jamison Bennett	Hamilton	self
POI	Kelly C. C.	MISSOULA	Wom. Law Caucus
POI	Kimberly Doherty	Missoula	Wom. Law Caucus
POI			
POI			
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.fm

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 13, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 66 - 2-08-01**

Executive Action: **HB 465 - POSTPONED**

Motion: Rep. Holden moved a substitute motion and will include the Hurdle amendment. #8

Discussion: Reps. Mangan, Harris, Newman.

Vote: Motion #8 carried 15-3 with Reps. Shockley, Mangan and Noennig voting no.

Motion: Rep. Curtiss moved an amendment #9

Motion: Rep. Gutsche moved a substitute amendment #10. Rep. Gutsche withdrew her amendment.

Discussion: Reps. Noennig, Curtiss

Vote: Rep. Curtiss amendment carried unanimously 19-0.

Vote: Rep. Harris' motion #6, HB 66 DO PASS AS AMENDED carried 14-5 with Reps. Shockley, Laszloffy, Adams, Mangan and Noennig voting no.

EXECUTIVE ACTION ON HB 290

Motion: Rep. Harris moved HB 290 DO PASS #11

Motion/Vote: Rep. Harris moved amendments. #12 EXHIBIT(juh36a03) Motion carried unanimously 18-0.

Motion/Vote: Rep. Harris moved HB 290 DO PASS AS AMENDED #13. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 233

Motion/Vote: Rep. Newman moved to take HB 233 off the Table #14. Motion failed 9-11 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Holden, Peterson, Rice, Thomas, Wolery and Younkin voting no.

EXECUTIVE ACTION ON HB 360

Motion: Rep. Clark moved HB 360 DO PASS. #15

Motion: Rep. Clark moved amendments EXHIBIT(juh36a04) #16

{Tape : 3; Side : A; Approx. Time Counter : 0.4 - 30.1}



HOUSE STANDING COMMITTEE REPORT

February 13, 2001

Page 1 of 1

Mr. Speaker:

We, your committee on Judiciary report that House Bill 290 (first reading copy - white) do pass as amended.

Signed: _____

Representative Jim Shockley, Chair

And, that such amendments read:

1. Title, page 1, line 4.

Strike: "CONCEALMENT OR"

Insert: "DECEPTION, COERCION, AND"

2. Title, page 1, line 5.

Strike: "'FORCE'"

Insert: "'WITHOUT CONSENT'"

3. Page 1, line 16.

Following: line 15

Insert: "(iii) overcome by deception, coercion, or surprise;"

Renumber: subsequent subsections

4. Page 1, line 22.

Following: "or"

Insert: "or"

5. Page 1, line 24 through line 25.

Strike: "or" on line 24 through "victim" on line 25

- END -

Committee Vote:

Yes 18, No 0.

361443SC.hdc

2-13
me

21

EXHIBIT 3
DATE 2-13-01
HB 290

H BILL NO. 290

1

2

INTRODUCED BY

Butch Windhill
(Primary Sponsor)

3

deception, coercion, and

4 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING ~~CONCEALMENT~~ *deception, coercion, and* SURPRISE IN THE DEFINITION
5 OF "~~FORCE~~ *without consent*" IN THE CONTEXT OF SEXUAL INTERCOURSE WITHOUT CONSENT; AND AMENDING
6 SECTION 45-5-501, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10

Section 1. Section 45-5-501, MCA, is amended to read:

11

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

12

(a) the victim is compelled to submit by force against the victim or another; or

13

(b) the victim is incapable of consent because the victim is:

14

(i) mentally defective or incapacitated;

15

(ii) physically helpless;

16

(iii) less than 16 years old; ~~or~~

17

(iv) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the

18

perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary

19

authority over the victim, unless the act is part of a lawful search; ~~or~~

20

(v) overcome by deception, coercion, or surprise.
(2) As used in subsection (1), the term "force" means:

21

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission

22

of a forcible felony by the offender; ~~or~~

23

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the

24

offender has the ability to execute the threat; ~~or~~

25

~~(c) the use of concealment or surprise to overcome the victim."~~

26

- END -

HOUSE OF REPRESENTATIVE

ROLL CALL

JUDICIARY

COMMITTEE

DATE 2-13-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	/		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	/		
REP. AUBYN CURTISS	/		
REP. BILL EGGERS	/		
REP. STEVE GALLUS	/		
REP. GAIL GUTSCHE	/		
REP. CHRISTOPHER HARRIS	/		
REP. LINDA HOLDEN	/		
REP. JOAN HURDLE	/		
REP. JEFF MANGAN	/		
REP. BRAD NEWMAN	/		
REP. MARK NOENNIG	/		
REP. KEN PETERSON	/		
REP. DIANE RICE	/		
REP. BILL THOMAS	/		
REP. MERLIN WOLERY	/		
REP. CINDY YOUNKIN	✓		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 2-13-01 Bill NO. HB 290 NUMBER 11MOTION: Rep. Harris moved DP

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 2-13-01 Bill NO. HB290 NUMBER #12MOTION: Rep. Harris moved amendments
Exhibit 3
Motion carried unanimously

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	/	
Rep. Joan Hurdle	/	
Rep. Jeff Mangan	/	
Rep. Brad Newman	/	
Rep. Mark Noennig	/	
Rep. Ken Peterson	/	
Rep. Diane Rice	/	
Rep. Bill Thomas	/	
Rep. Merlin Wolery	/	
Rep. Cindy Younkin	/	

20

0

25

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 2-13-01 Bill NO. NB290 NUMBER #13MOTION: Rep. Harris moved OPA

Name	AYE	NO
Rep. Jim Shockley, Chairman	/	
Rep. Jeff Laszloffy, Vice Chair Majority	/	
Rep. Paul Clark, Vice Chair Minority	/	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy		
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers		
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	/	
Rep. Christopher Harris	/	
Rep. Linda Holden	/	
Rep. Joan Hurdle	/	
Rep. Jeff Mangan	/	
Rep. Brad Newman	/	
Rep. Mark Noennig	/	
Rep. Ken Peterson	/	
Rep. Diane Rice	/	
Rep. Bill Thomas	/	
Rep. Merlin Wolery	/	
Rep. Cindy Younkin	/	

18

8

24

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (S) Judiciary -

02:22 PM

-
- HB 256** SPONSOR: Younkin, Cindy SHORT TITLE: Revise reckless and careless driving laws
REFERRED ON: 01/31/2001 HEARD ON: 03/02/2001
REFERRED ON: 03/03/2001
EXECUTIVE ACTION: 03/26/2001 -Bill Concurred as Amended -- VOTE: 7 - 0
EXECUTIVE ACTION: 03/02/2001 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 05/03/2001 Chapter Number Assigned
-
- HB 261** SPONSOR: Jent, Larry SHORT TITLE: Illegal operation of clandestine dangerous drugs lab
BY REQUEST OF: Attorney General
REFERRED ON: 02/28/2001 HEARD ON: 03/16/2001
EXECUTIVE ACTION: 03/24/2001 -Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION: 04/19/2001 Chapter Number Assigned
-
- HB 263** SPONSOR: Jent, Larry SHORT TITLE: Venue for contesting implied consent revocation
REFERRED ON: 02/01/2001 HEARD ON: 03/07/2001
EXECUTIVE ACTION: 03/07/2001 -Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION: 03/29/2001 Chapter Number Assigned
-
- HB 266** SPONSOR: Clancy, Gilda SHORT TITLE: Revise governmental accountability act
REFERRED ON: 02/06/2001 HEARD ON: 03/06/2001
EXECUTIVE ACTION: 03/16/2001 -Bill Concurred as Amended -- VOTE: 6 - 3
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned
-
- HB 286** SPONSOR: Thomas, Bill SHORT TITLE: Clarify victim's right to be present at proceedings
REFERRED ON: 02/06/2001 HEARD ON: 03/06/2001
EXECUTIVE ACTION: 03/06/2001 -Bill Concurred -- VOTE: 6 - 1
FINAL DISPOSITION: 03/22/2001 Chapter Number Assigned
-
- HB 290** SPONSOR: Waddill, Butch SHORT TITLE: Include coercion and surprise in definition of without consent for rape
REFERRED ON: 02/28/2001 HEARD ON: 03/15/2001
EXECUTIVE ACTION: 03/26/2001 -Bill Concurred as Amended -- VOTE: 5 - 2
FINAL DISPOSITION: 05/03/2001 Chapter Number Assigned
-

x2

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 15, 2001
at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearings and Dates Posted: HB 290, HB 360, HB 434, HB 563
Executive Action: HB 560

HEARING ON HB 290

Sponsor: REP. BUTCH WADDILL, HD 62, Florence

Proponents:

Kirsten LaCroix, Missoula Co. Prosecutor
Kelly Cogley, Women's Law Caucus-U.M.
Julie Johnson, Women's Law Caucus

Pam Bucy, Assistant Attorney General
 Rich Ochner, Missoula Police Dept.
 Mike Barrett, Self
 Dallas Erickson, Montana Citizens for Decency through Law
 Diana Garrett, President of Women's Law Caucus
 Julie Millam, Christian Coalition
 James Bekier, Women's Law Caucus

Opponents: None

Opening Statement by Sponsor:

REP. BUTCH WADDILL, HD 62, Florence, said there are certain people who have used their occupation to take advantage of women. He said this has allowed those individuals to commit sexual intercourse without consent. He read a newspaper article from the Missoulian, January 31, 2001, titled the Court Reverses Photographer's Rape Conviction. **EXHIBIT(jus59a01)** He said this bill would incorporate deception and coercion into the language of the rape law. He said it was amended in the House and line 26 was stricken.

Proponents Testimony:

Kirsten LaCroix, Missoula Co. Prosecutor, referred to the Missoulian Newspaper Article, Court Reverses Photographer's Rape Conviction. (EXHIBIT 1) She said there was at least 20 women who were molested by this man. He was charged with offending 14 of them and convicted on 12 of those accounted. Most of them were teenagers and young women. The molestation occurred in the context of him posing them during photo sessions. She said most of them had no means of escape as they were locked into a room. She explained some of the examples that had happened to each of these women. She said there are several of these types of cases throughout the country, however they are mostly classified as moral or heinous crimes. She said they have had cases come across their desk and they have had to decline prosecution based on the uncertainty of this legislation. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 14.4}**

Kelly Cogley, Women's Law Caucus-U.M., said their group was instrumental in getting this legislation drafted. After studying the Stevens case, there was a gap discovered in the law where it would be very difficult to prove sexual intercourse without consent. She said in these types of cases the conduct is sexual intercourse under the statute, but the women never consented. The problem is that as they looked at the statute, the "without consent" part of the statute is not clear because if a victim

didn't consent they legally didn't non-consent. She said there is a loophole in the law and she urged support for the bill.

Julie Johnson, Women's Law Caucus, said they expect to be protected from someone who uses force, coercion or surprise.

↓

Pam Bucy, Assistant Attorney General, said it is impossible to imagine the way a criminal can take advantage of an unsuspecting victim. This behavior has happened and will likely happen again and this bill fills a loophole. This bill adds to the definition of "without consent" with the words "deception, coercion and surprise".

Rich Ochner, Missoula Police Dept., said they have dealt with many cases like this before and offenders are actually aware of this loophole and will take advantage of it.

Mike Barrett, representing himself, rose in support of HB 290 and read some of the poetry he had composed. {Tape : 1; Side : A; Approx. Time Counter : 14.4 - 26.3}

Dallas Erickson, Montana Citizens for Decency through Law, read testimony in favor of HB 290. EXHIBIT(jus59a02)

Diana Garrett, President of Women's Law Caucus, said without this bill there would be many victims who will have no justice.

Julie Millam, Christian Coalition, rose in support of HB 290. EXHIBIT(jus59a03)

James Bekier, Women's Law Caucus, urged passage of HB 290.

Opponents Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'Neil asked what the definition of coercion was in this section. **REP. WADDILL** said he didn't think there was a definition of coercion anywhere listed in these statutes. He said coercion is something that is done under the table or without legitimate means as defined in the dictionary. {Tape : 1; Side : B; Approx. Time Counter : 0 - 29.6}

CHAIRMAN GROSFIELD said coercion is not defined in title 45, but deception is.

SEN. STEVE DOHERTY said he felt that there needed to be a definition especially for surprise as he doesn't really know what

that means. **Pam Bucy** said there are many terms in the criminal statute that are not defined and she does not think they need to be defined as they are defined in the dictionary. **Kirsten LaCroix** said one of the problems is they have so many words in statutes that are defined and others that have no definition. The problem is those that are defined, often they have several situations where they cannot see every possible scenario. She said personally, she would like to get rid of the entire definition of "without consent" and let the juries decide each issue. She said often they take the dictionary definition and the word "surprise" is fairly understandable.

SEN. DOHERTY said this language is probably okay because if the victim is overcome with surprise, the victim may be incapable of consent. **Kirsten LaCroix** said as it stands right now that without the word "surprise" in there defined or not, a person walking down the street could have a man come from behind and commit the act of penetration, but not cause physical injury and this would not be a violation under the current statute. The word "surprise" needs to be in this bill.

SEN. O'Neil asked if there is any difference in the penalty for "sex without consent" and "sex with the use of force". **Kirsten LaCroix** said there is no difference in the penalty.

SEN. DUANE GRIMES said under the statute, there would have to be some unreasonable behaviors on the one that has been violated in order to prove "without consent". He said he was concerned that someone might entice the photographer, etc. and then later claim surprise, deception or coercion and how are they protected against that. He said he does not want this to be used mischievously, etc. **Kirsten LaCroix** said there was a state statute where they have to prove the mental state of the defendant as well as the victim. She said the second thing is prosecutorial discretion. They get a lot of sex cases and only about one-third of those cases are charged. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 10.2}**

CHAIRMAN GROSFIELD said this bill talks about the use of concealment and the House struck that out and used deception and coercion. He asked what the difference was by using these words. **Kelly Cogley** said when they began drafting this legislation they went through the statutes from other states and they used specific language with the words "concealment" and "surprise". She said the reason they put it under force was there was a prior case in Montana involving a high school student and a superintendent. The superintendent told the student that if she didn't have sexual relations with him that he would make sure she

did not graduate and she was over 18. She said the House did amend this and is for the better as there are several occasions where force was not the issue.

CHAIRMAN GROSFIELD said the House has stricken "concealment" and put in "deception and coercion" and this was a concern. **Kelly Cogley** said there are certain cases that are concealment issues, but could also be argued under surprise as well. She said she felt a prosecutor could make a valid case under the definition of deception or surprise. **Kirsten LaCroix** said she does not like the word "concealment" because there are not practical situations in which it would apply and it could be covered by the word "surprise". The necessary parts of the bill need to identify "surprise" and "deception" and they don't need to be defined.

CHAIRMAN GROSFIELD said some of the situations that were talked about in testimony involved the work place, etc., where the defendant had some sort of authority over their victims. He asked if there were unintended consequences and would this bill inter-relate with such scenarios as date rape, etc. **Kirsten LaCroix** said she did not think this language would encourage false reporting which is something they are wary of anyway. She said the applicability of these amendments was universal not just pointing at professional entities.

SEN. GRIMES asked currently when they apply "intercourse without consent" statutes do they have to prove there was reasonable resistance at all. **Kirsten LaCroix** said in the rape statute there was a provision that says that a victim is not required to resist that force, fear or threat alone is sufficient. But in some cases a jury does not use it.

SEN. HALLIGAN said because of the expansion of the definition do they open up the victim's sexual history allowed under the statute. **Kirsten LaCroix** said no there are statutes that protect women from this happening.

Closing By Sponsor:

REP. WADDILL said it is difficult for legislators to determine what the extent of their decision are going to be when they are put into law. He said the protection of the victim needs to be put above those who commit offenses. He said this bill is time sensitive as there are cases like this happening all the time and this will help fill a gap in the current law. **{Tape : 1; Side : B; Approx. Time Counter : 10.2 - 26}**

The following exhibit
is a pamphlet or a newspaper which can
not be scanned.

Exhibit 1
3.15.01
HB 290

The complete exhibit is located with
the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena. MT 59620-1202
[406] 444-4775

Testimony in favor of House Bill 290

Dallas D. Erickson

Montana Citizens for Decency through Law, Inc.

406 777 5862

March 14, 2001

SENATE JUDICIARY

Exhibit No. 2

Date 3/15/01

Bill No. HB 290

Mr. Chairman and Members of the Committee:

Our organization supports this bill and I would like to thank Representative Waddill for bringing it forward.

I worked for a Sheriff in Lincoln County who had the opinion that there is no such thing as rape. I have found that many men share that view. The Montana legislature has allowed our state to be one of the most permissive states when it comes to obscenity. A common theme of this violent material is that women enjoy being raped and abused.

Many of those who treat sexual offenders in our state say that some men believe that myth and they believe that when a woman says no she really means yes. They believe that if they use the element of deception, coercion, or surprise to use a woman for their sexual pleasure, she will end up thanking them and asking them if they can do it again.

That is a lie that pornographers push and many believe. This bill is an important step in protecting women who may not be aware of the prevalence of such an attitude and gives them a recourse against these exploitive men.

Please give this bill a DO PASS recommendation. Thank you.

SENATE JUDICIARY

Exhibit No. 3

Date 3/15/01

Bill No. HB 290

25 January, 2001

Mr. Chairman and members of the committee:

For the record my name is Julie Millam, executive director of Christian Coalition of Montana, our state's largest family advocacy organization representing 40,000 households in our great state. I rise in support of HB 290.

This measure before you today is common sense legislation. Our organization applauds this effort to further protect victims from the terrible hateful crime of rape.

On behalf of the 40,000 households I represent, I strongly recommend a "do pass" on HB 290.

Respectfully Submitted,
Julie Millam, executive director.

DATE March 15, 2001

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 290, HB 360, HB 434, HB 563

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
MARK MURPHY	444-2026	A.G.'s OFFICE	HB 360	X	
Pam Buey	444-2026	" "	HB 290 563	X	
KIRSTEN LACROIX	523-4737	Missouri County	"	X	
Richard Dettwiler	527-4694	MISSOURI POLICE	HB 290	X	
Mike Barrett	443-2195	SELF; multi-racial + gender Atrocity + gay philos + law interests INFORMALLY	" 290 360	✓	
James Bekier	549-8746	Women's Law Caucus	290 360	✓	
Jake Johnson	543-2592	" Women's Law Caucus	290 360	✓	
Diana Barrett	327-8222	WLC	290 360	✓	
Kelly Cogler		Women's Law Caucus	290 360	✓	
JONDA N. MOON	826-6666	children	360	X	
MARY T MOON	826-6666	myself	360	X	
Dallas D Erickson	777-5862	MCOL	290	X	
JOHN HALBOR	827-4929	MYSELF & YOUTH	360	X	

Julie Millam 442-6740 m + cc
VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/15/01

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 290, HB 360, HB 434, HB 563

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Toohé Walker	827-3218	SCFF	HB 360	✓	
ERIK PRITCHARD	543 2592	UM w Law Center			
Palmy Garcia	248-7234	SSNTF	434	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 26, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 256, HB 419, HB 151, HB
213, HB 360, HB 434, HB 290,
HB 165

EXECUTIVE ACTION ON HB 256

Discussion:

SEN. DUANE GRIMES explained the bill pertaining to penalty
increases for careless and reckless driving.

restrictions. **Valencia Lane** said the concern was creating a new offense and penalties for violating the offense. She said the amendment would be a sentencing bill placing it with the sentencing statutes.

SEN. HALLIGAN felt the sentencing would be consistent. He said this would not create the separate offense. **SEN. AL BISHOP** pointed to the second page of the amendment. He wondered about subdivisions. **SEN. HALLIGAN** added if private parks were exclusive to certain areas then the police would not have jurisdiction.

Substitute Motion: **SEN. O'NEIL** made a substitute motion striking language on page 17 to page 19 and insert "at any location".

Discussion:

SEN. O'NEIL felt this addition would be good because it allows the probation of a parole officer rather than a judge to supervise.

SEN. GRIMES wondered about probation officers and how they can notify residents. He worried about the consequences involved. **SEN. HALLIGAN** felt it delegates to parole officers the authority where a person may reside. He said this infringes on due process rights.

SEN. BISHOP said if parole officers would have to obtain a big building for these people to reside in. **SEN. O'NEIL** believed the due process rights were not inflicted. He said leaving the authority with the judge would not be as effective.

Vote: Substitute motion failed 7-1 with **SEN. O'NEIL** voting yes.

Vote: Motion carried unanimously.

Motion/Vote: **SEN. GRIMES** moved **HB 434 BE CONCURRED IN AS AMENDED**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 290

Motion: **SEN. O'NEIL** moved **HB 290 BE AMENDED**. Amendments were handed out **EXHIBIT(jus68a04)**.

Discussion:

CHAIRMAN GROSFIELD talked about striking language within the bill. He felt the word deception was bothersome. He gave the definition of deception and felt unintended consequences would be in the bill with this language.

{Tape 3; Side A}

SEN. O'NEIL felt language should be taken out. He talked about the statute of limitations and gave examples of how this effects the bill. **SEN. GRIMES** wanted to segregate the amendments. He thought these were two different discussions.

Substitute Motions 1 & 2: **CHAIRMAN GROSFIELD** felt the committee should segregate the amendments dealing with the deception language first and then vote on the language of surprise.

Discussion:

SEN. GRIMES wondered if this bill dealt with sexual intercourse without consent allowing for deception. **CHAIRMAN GROSFIELD** talked about the unintended consequences associated with a former spouse or boyfriend/girlfriend.

Vote: Substitute Motion #1 STRIKING LANGUAGE OF DECEPTION FROM BILL carried unanimously.

Discussion:

SEN. O'NEIL talked about incidences the proponents testified on. He thought the language of surprise would make the offense a felony and explained felony rape against resistance.

CHAIRMAN GROSFIELD said the reason for this bill deals with situations where attorneys cannot prosecute. He said the bill further defines without consent.

Vote: Substitute Motion #2 LANGUAGE OF SURPRISE BE ELIMINATED carried 5-2 with **SEN. BISHOP** and **SEN. O'NEIL** voting no.

Motion/Vote: **SEN. GRIMES** moved HB 290 BE CONCURRED IN AS AMENDED. Motion carried 5-2 with **SEN. BISHOP** and **SEN. O'NEIL** voting no.

DISCUSSION ON HB 165

CHAIRMAN GROSFIELD explained the bill and the need for clarification. He felt this bill had too many details to work with. He thought there was concern from archeologists dealing



SENATE STANDING COMMITTEE REPORT

March 26, 2001

Page 1 of 1

Mr. President:

We, your committee on Judiciary recommend that House Bill 290 (third reading copy - blue) be concurred in as amended.

Signed: 
Senator Lorents Grosfield, Chair

To be carried by Senator Lorents Grosfield

And, that such amendments read:

1. Title, line 4.
Following: "OR"
Strike: "DECEPTION,"
Following: "COERCION"
Strike: "L"

2. Page 1, line 16.
Following: "BY"
Strike: "DECEPTION,"
Following: "COERCION"
Strike: "L"

- END -

Committee Vote:
Yes 5, No 2.

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Amendments to House Bill No. 290
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 26, 2001 (1:00PM)

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 03/26/01

BILL NO. HB 290

1. Title, line 4.

Following: "OR"

Strike: "DECEPTION,"

Following: "COERCION"

Strike: "1"

2. Page 1, line 16.

Following: "BY"

Strike: "DECEPTION,"

Following: "COERCION"

Strike: "1"

- END -

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 290

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 17, 2001
at 12:30 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Mike Halligan (D)
Sen. Walter McNutt (R)
Rep. Cindy Younkin, Vice Chair (R)
Rep. Butch Waddill (R)
Rep. Christopher Harris (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Staff
Mary Lou Schmitz, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: **HB 290**

Senator Grosfield said the Senate amended the Bill by removing the word "deception". He said it was probably at his insistence that the word was removed. The reason was "deception" is defined in statute and he was concerned by the statement in **EXHIBIT(1)**, #5, page 2, "Because of this deception, the victim was INCAPABLE of giving consent".

Valencia Lane said that defines the statute being amended in the Bill which tells you what "without consent" means for purposes of prosecution under the "intercourse without consent" statute.

Senator Grosfield said what concerned him was discussed a little bit. He cited a scorned woman syndrome and having a disgruntled

ex-lover try to go after a former husband, boy friend etc. under this statute which is pretty serious and worried about charges.

Rep. Harris asked **Senator Grosfield** what would be a circumstance? **Senator Grosfield** said the promise of something in exchange for a relationship and that relationship goes sour and then they would claim a deception is involved. Those scenarios brought up in committee were taken care of by either "surprise" or "coercion". He is worried about unintended consequences. **Rep. Harris** said he shared his general view but thinks its modified by the phrase "overcome by" where there is a little bit of deception.

Senator McNutt said he voted for striking the word "deception".

Senator Halligan cited an example of a physician giving a pap smear but does something else. **Rep. Harris** said in that instance the prosecutor would have no problem at all proving deception.

Rep. Harris agreed with **Senator Grosfield** that it is broad but "overcome by deception" takes care of that problem. **Senator Halligan** said **Kirsten LaCroix, Senior Deputy Missoula County Attorney**, who testified in the committee, turns down at least two-thirds of the cases that are brought to her because she can't prove it. That is how difficult these cases are to prosecute.

Senator Grosfield said this needs to be fixed but his only concern is about unintended consequences and are we going too far?

Motion: **Senator Halligan** moved that "deception" be reinserted on Page 1, line 16 and in the Title.

Discussion: **Senator Grosfield** said he is somewhat convinced and whether it is thought of in terms of deception, coercion or surprise, the victim is incapable of consent because the victim never had any reason to see it coming. In the case of the seduction that is done by enticement there is still consent and that is why it would not come up as a potential case under this statute. **Rep. Harris** said that is correct. The victim has been overcome by deception and as a result of that is incapable of consent as opposed to a situation of a seduction case where she is capable of consent.

Vote: Motion carried unanimously 6-0.

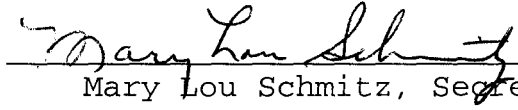
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ADJOURNMENT

Adjournment: 12:55 P.M.



SENATOR LORENTS GROSFIELD, Chairman



Mary Lou Schmitz, Secretary

LB/mls



CONFERENCE COMMITTEE

on Senate amendments to House Bill 290

Report No. 1, April 17, 2001

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on **House Bill 290**, met April 17, 2001, and considered:

- Senate Committee on Judiciary amendments to third reading copy, dated March 26, 2001.

For the House:

Charles Younkin
Representative Younkin, Vice-Chair

Brian Waddill
Representative Waddill

Christopher Harris
Representative Harris

David J. Gey
Amendment Coordinator

Theresa Rane
Chief Clerk of the House

For the Senate:

Leon Grosfield
Senator Grosfield, Chair

Stella McNutt
Senator McNutt

Michael Halligan
Senator Halligan

We recommend that **House Bill 290** (reference copy - salmon) be amended as follows:

- Title, line 4.

Following: "DECEPTION,"

Insert: "DECEPTION,"

Following: "COERCION,"

Insert: ", "

ADOPT

REJECT

CCR #1
HB 290

AC HB 290-1

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[Handwritten mark]

2. Page 1, line 16.
Following: "DECEPTION,"
Insert: "deception,"
Following: "COERCION,"
Insert: ", "

- END -

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CONTACT THE MONTANA HISTORICAL SOCIETY LIBRARY

406-444-2681

FOR CONFERENCE COMMITTEE EXHIBIT.



AN ACT INCLUDING DECEPTION, COERCION, AND SURPRISE IN THE DEFINITION OF "WITHOUT CONSENT" IN THE CONTEXT OF SEXUAL INTERCOURSE WITHOUT CONSENT; AND AMENDING SECTION 45-5-501, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against the victim or another; or

(b) the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

~~(iii)~~ (iv) less than 16 years old; or

~~(iv)~~ (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

- END -